

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MICHANNA LATERESE GACH
BAKER and FELICITY ANN GACH, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHELLE GACH,

Respondent-Appellant,

and

JOSE BAKER,

Respondent.

UNPUBLISHED

June 10, 2003

No. 241785

Wayne Circuit Court

Family Division

LC No. 01-395983

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii). We affirm.

Respondent-appellant argues that the juvenile court erred in terminating her parental rights because there was not clear and convincing evidence supporting termination. We disagree. We review a trial court's decision to terminate parental rights under the clearly erroneous standard. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

In this case, a petition for permanent custody of the children was filed after the death of their three-month-old sibling, Jose Baker, Jr., who was the son of respondent-appellant and Jose Baker. The emergency room physician who treated Jose Jr. observed several injuries on his body, leading her to suspect child abuse. Although the pathologist who performed the autopsy on Jose Jr. found that the infant had died of bronchopneumonia, he concluded that the manner of

death was homicide because the multiple injuries on Jose Jr.'s body in various stages of healing were indicative of prior abuse and continued neglect and had prevented him from responding effectively to his bronchopneumonia.

Additionally, evidence was presented at trial that a case of child abuse had been substantiated against Jose Baker in September 2000 for injuries to his then five-year-old son Joseph. Respondent-appellant was present when that abuse occurred and was advised by a protective services worker that Mr. Baker posed a risk to her children's welfare. The juvenile court could also have reasonably concluded from the evidence at trial that respondent-appellant covered for Mr. Baker when she brought Jose Jr. to see a doctor when his arm was broken. Although respondent-appellant informed the protective services worker that Mr. Baker was no longer living with her, the protective services worker later became aware that Mr. Baker was still living with respondent-appellant at the time of Jose Jr.'s death in January 2001. Respondent-appellant admitted at trial that she did not separate from Mr. Baker until March or April 2001 and that she did not believe that Mr. Baker posed a risk to her children. Evidence was also presented that respondent-appellant failed to adequately follow-up on medical monitoring of Michanna's severe anemia.

Consideration of the foregoing facts establishes that the juvenile court did not clearly err in finding that termination of respondent-appellant's parental rights was supported by clear and convincing evidence under MCL 712A.19b(3)(b)(ii), (g), and (j). MCR 5.974(I); *In re Trejo Minors*, *supra* at 356. Although the court erred in terminating respondent-appellant's parental rights under MCL 712A.19b(3)(b)(i) and (k)(iii), where the evidence did not show that respondent-appellant personally committed any abuse, this error was harmless in light of the other grounds supporting termination. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Further, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, *supra* at 354. Thus, the juvenile court did not clearly err in terminating respondent-appellant's parental rights to the children.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Brian K. Zahra